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No. 15-274

In the Supreme Court of the United States

WHOLE WOMAN'S HEALTH, et al.,

Petitioners,

v.

JOHN HELLERSTEDT, COMMISSIONER, TEXAS DEPARTMENT OF STATE HEALTH SERVICES, et al.,

Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

BRIEF OF AMICI CURIAE BIPARTISAN GROUP OF 174 UNITED STATES SENATORS AND MEMBERS OF THE UNITED STATES HOUSE OF REPRESENTATIVES IN SUPPORT OF RESPONDENTS

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INTEREST OF AMICI CURIAE[1]

Amici curiae are 34 United States Senators and 140 Members of the United States House of Representatives who believe that it is critical that courts give meaningful deference to legislative judgments regarding issues of public health and safety, especially when such judgments must be made in the face of scientific uncertainty and divided medical opinion. Such judicial deference is especially important in contexts, such as this one, where medical and scientific opinions may be intertwined with philosophical and political views. As members of the United States Congress, amici are routinely called upon to make difficult legislative judgments in the face of medical disputes and scientific uncertainty, and in doing so they have access to a variety of tools not available to courts, including the ability to independently solicit the opinions of unbiased experts, to hold hearings at which broad questions of public policy are examined, and to seek out and consider the views of the public. As members of a democratically accountable body with broad legislative fact-finding duties and abilities, amici have a powerful interest in preserving their latitude, as well as the latitude of legislators at the state and local levels, to weigh competing scientific and medical evidence and make judgments such as the one at issue here.

Whatever individual views amici may hold regarding whether this Court's abortion precedents

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[1] The parties have consented to the filing of this brief. *See* SUP. CT. R. 37.3(a). No counsel for any party authored this brief in whole or in part, nor did any person or entity, other than amici or their counsel, make a monetary contribution to the preparation or submission of this brief. *See* SUP. CT. R. 37.6.

were rightly decided and whether those decisions should be reconsidered in an appropriate case, amici agree that this Court need not revisit any of its earlier decisions to uphold the health and safety regulations at issue here. For under the deferential approach to legislative medical judgments repeatedly followed by this Court since *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833 (1992), the Texas regulations should easily survive judicial review.

The Senators and Members who join this brief are listed alphabetically in the accompanying appendix.

SUMMARY OF ARGUMENT

Faced with genuine concerns about the safety of women who obtain abortions in Texas, the state legislature decided that outpatient abortions should be performed only by doctors with admitting privileges at nearby hospitals and at facilities that comply with the regulations that govern ambulatory surgical centers, the facilities where other outpatient surgeries are performed in Texas. While some scientists and doctors agree with the need for, and the efficacy of, these requirements, other scientists and doctors disagree. Nor is this lack of consensus particularly surprising, given scientific uncertainty, diversity of medical opinion, and the variety of strongly held political views regarding abortion both in Texas and throughout this Nation. The Texas Legislature nevertheless decided to strike a balance that gives first priority to women's health and safety, choosing to risk erring on the side of safety rather than on the side of danger. The Court owes substantial deference to the Texas Legislature's judgment on this quintessentially

legislative issue. The health and safety regulations at issue here fall comfortably within the broad bounds of legislative discretion that this Court's cases recognize.

At least since *Planned Parenthood v. Casey*, this Court has refused to lightly second-guess legislative judgments about what regulatory measures will best safeguard the health and safety of women who have abortions. *Casey* itself recognized that States enjoy "broad latitude" to regulate abortion, just as they may regulate other medical procedures, in the pursuit of these plainly legitimate ends. 505 U.S. at 885. The Court reaffirmed that fundamental principle in *Gonzales v. Carhart*, 550 U.S. 124, 166 (2007), explaining that "[c]onsiderations of marginal safety, including the balance of risks, are within the legislative competence when the regulation is rational and in pursuit of legitimate ends."

The Court has taken the same deferential approach to judicial review of legislative judgments in a wide array of other contexts, and it is justified both by the superior investigatory and fact-finding abilities of legislatures and also by the decision of the People to vest legislative power in their elected representatives rather than the courts. *See Turner Broad. Sys., Inc. v. FCC*, 520 U.S. 180, 195–96 (1997). Such deference is especially appropriate where, as here, a legislature responds to medical controversy and scientific uncertainty by choosing a regulatory approach that favors patient safety.

Under the deferential standard of review that applies to legislative judgments about what regulations will most effectively promote the health and safety of women who choose to have abortions, the

abortion regulations at issue here comfortably survive constitutional scrutiny. A number of high profile cases in recent years have revealed that some abortions are performed by unscrupulous doctors in unsanitary, under-regulated clinics. And even in abortion clinics that have not been mired in such scandals, complications inevitably arise that require intervention by medical professionals in hospital facilities. The Texas Legislature reasonably concluded that the challenged regulations would protect women from such dangers, and the Court should defer to that legislative judgment and affirm the decision below.

Petitioners and their congressional amici urge this Court to dismiss as pretextual the objectively legitimate concerns for public health and safety that justify the abortion regulations at issue in this case. But "[i]t is a familiar principle of constitutional law that this Court will not strike down an otherwise constitutional statute on the basis of an alleged illicit legislative motive." *United States v. O'Brien*, 391 U.S. 367, 383 (1968).

In all events, Petitioners fall far short of showing what would be necessary to establish that the purpose of the abortion regulations now before this Court was to unduly burden abortion clinics rather than to protect the health and safety of women who obtain abortions. As this Court has repeatedly recognized, inquiries into the purpose of official actions taken by large legislative bodies are inherently problematic, and the Court should set aside a proffered rationale for legislative action only if it "could not have been a goal of the legislation." *Weinberger v. Wiesenfeld*, 420 U.S. 636, 648 n.16 (1975). In light of the ample objective

evidence that supports Texas' explanation for its abortion regulations, no further inquiry into legislative purpose is needed to support the conclusion that these regulations are constitutionally permissible.

ARGUMENT

I. The Court Owes Substantial Deference to the Texas Legislature's Judgment About How Best To Safeguard the Health and Safety of Women Who Seek Abortions.

A. This Court's Precedents Require Substantial Deference to Legislative Judgments Regarding the Wisdom of Regulations Designed To Make Abortions Safer.

More than two decades have passed since this Court made clear that it would no longer "serve as the country's *ex officio* medical board" for abortion procedures, "with powers to approve or disapprove medical and operative practices and standards throughout the United States." *Webster v. Reproductive Health Servs.*, 492 U.S. 490, 518–19 (1989) (plurality opinion) (internal quotations marks omitted). Under *Planned Parenthood v. Casey* and the decisions that have followed it, "[r]egulations designed to foster the health of a woman seeking an abortion are valid if they do not constitute an undue burden," 505 U.S. at 878, and legislatures enjoy "broad latitude" to decide when such regulations are needed, *id.* at 885. Judicial deference to legislative judgments regarding the need for health and safety regulations in the abortion context is both a key element of the constitutional balance struck by *Casey* and an essential safeguard that prevents courts

from straying beyond their judicial function and into the legislative realm.

This Court's most recent abortion precedents call for an especially deferential approach where, as here, a legislature acts to promote a legitimate end, such as patient health and safety, in the face of scientific debate or medical uncertainty. Confronted with conflicting evidence over the utility of partial birth abortion in *Gonzales v. Carhart*, 550 U.S. at 166, this Court upheld the federal ban on that procedure, explaining that "[c]onsiderations of marginal safety, including the balance of risks, are within the legislative competence when the regulation is rational and in pursuit of legitimate ends." Uncertainty itself can thus be "a sufficient basis" for concluding that a health and safety regulation "does not impose an undue burden" on a woman's ability to obtain an abortion, *id.* at 164, for legislatures enjoy "wide discretion to pass legislation in areas where there is medical and scientific uncertainty," *id.* at 163.

This Court has repeatedly followed that deferential approach since *Casey*, which itself refused to overturn Pennsylvania's requirement that only licensed physicians provide abortion patients with certain information "even if an objective assessment might suggest that those same tasks could be performed by others." 505 U.S. at 885. In addition to upholding the federal prohibition on partial birth abortions in *Gonzales*, the Court in *Mazurek v. Armstrong*, 520 U.S. 968, 973 (1997), upheld a Montana statute requiring that abortions be performed only by physicians, rejecting as "squarely foreclosed by *Casey* itself" the plaintiffs' argument that "all health evidence contradicts the claim that

there is any health basis" for the challenged statute. The Court's deferential approach to such legislative judgments is clearly appropriate because, as Justice Kennedy has explained, "[c]ourts are ill-equipped to evaluate the relative worth of particular surgical procedures," and legislatures "have superior factfinding capabilities in this regard." *Stenberg v. Carhart*, 530 U.S. 914, 968 (2000) (Kennedy, J., dissenting).

Petitioners ask the Court to abandon this deferential approach and effectively return to the legal framework applied in abortion cases prior to *Casey*. Under that framework, this Court would decide for itself whether Texas' regulations "depart from accepted medical practice" with little regard for the Texas Legislature's judgment about how best to ensure that abortions are performed safely. *See City of Akron v. Akron Ctr. for Reprod. Health, Inc.*, 462 U.S. 416, 429–31 (1983). Petitioners' approach would call into question the federal partial birth abortion ban upheld in *Gonzales*, the Montana requirement that abortions be performed by physicians upheld in *Mazurek*, and a variety of other state and federal abortion regulations adopted to promote women's health and other plainly legitimate ends in the face of scientific uncertainty and medical debate. For good reason *Casey* repudiated this "physician-first view," which effectively vested courts with legislative power. *Stenberg*, 530 U.S. at 969 (Kennedy, J., dissenting); *see Casey*, 505 U.S. at 884. Courts are simply not equipped to assess the merits of competing opinions about what regulations will best promote the safety of medical procedures—a fundamentally legislative task. *See City of Akron*, 462 U.S. at 456 (O'Connor, J.,

dissenting) (criticizing view that courts, "without the resources available to those bodies entrusted with making legislative choices," are competent to oversee the development of regulations in this area).[2]

To be sure, this Court has said that in abortion cases, as in other constitutional contexts, it "retains an independent constitutional duty to review factual findings where constitutional rights are at stake." *Gonzales*, 550 U.S. at 165. But the Court should not allow itself to be put to a false choice between "[u]ncritical deference" to legislatures and a return to the essentially *de novo* review of legislative judgments that *Casey* rejected. *Id.* at 166. Rather, this Court's task is to determine whether the regulations at issue here are "rational and in pursuit of legitimate ends"—not whether the Texas Legislature struck the ideal balance among competing risks from a medical perspective. *Id.*

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[2] While exhuming the standard that this Court used when reviewing abortion regulations prior to *Casey* would call into question the constitutionality of other state and federal statutes, the regulations at issue in this case would likely survive constitutional scrutiny even under the rigid, pre-*Casey* standard. After all, this Court has always recognized that States may adopt abortion regulations that further "important health-related State concerns." *City of Akron*, 462 U.S. at 430. And the requirement that abortion clinics comply with regulations that apply to facilities where other outpatient surgeries are performed is strikingly similar to the regulations upheld by the Court as constitutional in *Simopoulos v. Virginia*, 462 U.S. 506, 515–16 (1983) (upholding requirement that second-trimester abortions be performed in facilities that meet "the same regulations applicable to all outpatient surgical hospitals in Virginia" and observing that "[i]n view of its interest in protecting the health of its citizens, the State necessarily has considerable discretion in determining standards for the licensing of medical facilities").

B. This Court's Deferential Treatment of Legislative Judgments in the Abortion Context Accords with Its Approach in Other Areas of Constitutional Law.

This Court's decisions in a wide variety of other constitutional contexts underscore the wisdom of the deferential review of legislative judgments mandated by *Casey*. The Court explained the two-fold rationale for such deference in *Turner Broadcasting System, Inc. v. FCC*, 520 U.S. at 195, which concerned a First Amendment challenge to a content-neutral restriction on speech. First, judicial deference to legislative judgments is justified as a matter of institutional competence because legislatures are "far better equipped than the judiciary to amass and evaluate the vast amounts of data bearing upon legislative questions." *Id.* (internal quotation marks omitted); *see* Archibald Cox, *The Role of Congress in Constitutional Determinations*, 40 U. CIN. L. REV. 199, 209 (1971) (explaining that a legislature is a "better fact-finding body than an appellate court"). Unlike legislatures, courts are limited to considering the arguments and evidence adduced by the parties before them, and this limitation on judicial decision-making makes courts incapable of the type of free-ranging, open-ended inquiry that sound legislative policymaking requires. Second, courts owe Congress and other legislatures deference "out of respect for [their] authority to exercise the legislative power." *Turner Broadcasting*, 520 U.S. at 196. The People have vested legislative authority in Congress and the legislatures of the States, and courts must take care not to seize this legislative power for themselves under the guise of judicial review. *Turner Broadcasting* gave substantial

deference to the predictive judgments of Congress even while applying intermediate scrutiny—a standard similar in some respects to the "undue burden" test that *Casey* adopted—and its rationale for deferring to legislative determinations applies with full force here.

This Court has taken the same approach in an array of other constitutional contexts. Just a few terms ago, the Court reversed a decision that "failed to afford appropriate deference to West Virginia's reasonable exercise of its political judgment" about redistricting. *Tennant v. Jefferson Cnty. Comm'n*, 133 S. Ct. 3, 5 (2012) (per curiam). Similarly, in *Board of Education of Westside Community Schools v. Mergens*, 496 U.S. 226, 251 (1990), the Court rejected an Establishment Clause challenge to a federal statute, resting its decision in part on a congressional finding that students were unlikely to perceive religious clubs' equal access to school facilities as state endorsement of religion. In so ruling, the *Mergens* Court explained that it would not "lightly second-guess such legislative judgments, particularly where the judgments are based in part on empirical determinations." Numerous other decisions of this Court are to similar effect. *See, e.g.*, *Holder v. Humanitarian Law Project*, 561 U.S. 1, 31–33 (2010) (deferring to the Government's national security judgments even while applying strict scrutiny); *Walters v. National Ass'n of Radiation Survivors*, 473 U.S. 305, 330 n.12 (1985) (explaining that congressional findings are "of course entitled to a great deal of deference" in the due process context); *Rostker v. Goldberg*, 453 U.S. 57, 68 (1981) (making clear that courts "must be particularly careful not to substitute [their own] judgment of what is desirable for that of

Congress, or [their] own evaluation of evidence for a reasonable evaluation by the Legislative Branch" in the equal protection context).

The same principle applies with equal force to judicial review of statutes that reflect the empirical and predictive judgments of state legislatures. Like Congress, state legislatures "are better qualified to weigh and evaluate the results of statistical studies in terms of their own local conditions and with a flexibility of approach that is not available to the courts." *McCleskey v. Kemp*, 481 U.S. 279, 319 (1987) (internal quotation marks omitted). For that reason, States are "not required to convince the courts of the correctness of their legislative judgments." *Minnesota v. Clover Leaf Creamery Co.*, 449 U.S. 456, 463–64 (1981). Indeed, deference to state legislative determinations is appropriate even when state laws are subjected to strict scrutiny. *See Burson v. Freeman*, 504 U.S. 191, 208–09 (1992). Such deference is *a fortiori* required under the more forgiving undue burden standard announced in *Casey*.

C. Judicial Deference Is Especially Appropriate When, Faced with Medical Uncertainty, Legislatures Choose To Risk Erring on the Side of Patient Safety Rather Than on the Side of Endangering Patients.

While legislative judgments on a wide variety of topics are due substantial deference, there are few areas in which legislatures have a greater advantage over courts than the regulation of the practice of medicine. Regulation of the medical profession necessarily

involves balancing competing risks, often in the presence of scientific uncertainty and differences of opinion about what is best for patients. Courts are especially ill-equipped to decide such matters, and thus "it is precisely where disagreement [among medical experts] exists that legislatures have been afforded the widest latitude in drafting statutes." *Kansas v. Hendricks*, 521 U.S. 346, 360 n.3 (1997). This principle fully applies to the regulation of abortion: "The law need not give abortion doctors unfettered choice in the course of their medical practice, nor should it elevate their status above other physicians in the medical community." *Gonzales*, 550 U.S. at 163.

When confronted with uncertainty over how best to regulate a medical procedure, the Texas Legislature made the eminently reasonable decision to risk erring on the side of patient safety. From a patient-safety standpoint, it cannot seriously be argued that a woman is medically worse off when her abortion is performed at an ambulatory surgical center—the same type of facility where other outpatient surgeries are performed in Texas—by a physician with admitting privileges at a nearby hospital. And the record in this case amply demonstrates that these regulations have the potential to provide substantial benefits, especially to women who experience complications as a result of an abortion. Faced with conflicting evidence over the utility of the regulations at issue, the Texas Legislature chose to take the more cautious, safety-oriented approach. Courts are not qualified to second-guess this type of quintessentially legislative judgment.

Furthermore, the Court should be mindful that a decision striking down Texas' regulations would permanently circumscribe how legislatures may address an issue that is subject to considerable scientific uncertainty and medical debate. Unlike Congress or a state legislature, this Court cannot easily revise its approach at a future date in light of new evidence. That is a reason to give the Texas Legislature's decision an additional measure of deference, lest the Court's decision ossify regulations in a developing field.

This Court's precedent leaves no doubt that legislatures have wide latitude to act in the public interest when faced with medical and scientific controversy. The Court has refused to "override a legislative determination manifest in a statute" about the medicinal value of marijuana, *United States v. Oakland Cannabis Buyers' Coop.*, 532 U.S. 483, 493 (2001), declined to second-guess Congress' determination that certain X-ray results are not reliable evidence of disability, *Usery v. Turner Elkhorn Mining Co.*, 428 U.S. 1, 33–34 (1976), and warned that "courts should be cautious not to rewrite legislation" in areas "fraught with medical and scientific uncertainties," *Marshall v. United States*, 414 U.S. 417, 427 (1974). The same rule applies here, and the Texas Legislature acted well within its broad discretion when it responded to considerable medical and scientific uncertainty by giving first priority to patient safety.

II. Texas' Health and Safety Regulations Easily Survive Constitutional Scrutiny Under the Deferential Standard of Review Required by This Court's Precedents.

The Texas Legislature's judgment regarding the need for the challenged regulations is amply justified by the State's interest in protecting the health and safety of women who receive abortions. As an initial matter, it bears emphasis that the regulations at issue in this case—and similar regulations adopted by other jurisdictions—were adopted in the wake of horrifying revelations about the West Philadelphia abortion clinic operated by Dr. Kermit Gosnell. Due to regulatory failures at multiple levels, Pennsylvania officials did not inspect Dr. Gosnell's clinic for many years. As recounted in a grand jury report, when investigators finally entered the clinic as part of an unrelated investigation into illegal prescription drug activity, the deplorable conditions they found were shocking:

> There was blood on the floor. A stench of urine filled the air. A flea-infested cat was wandering through the facility, and there were cat feces on the stairs. Semi-conscious women scheduled for abortions were moaning in the waiting room or the recovery room, where they sat on dirty recliners covered with blood-stained blankets.
>
> All the women had been sedated by unlicensed staff—long before Gosnell arrived at the clinic—and staff members could not accurately state what medications or

> dosages they had administered to the waiting patients. Many of the medications in inventory were past their expiration dates.
>
> Investigators found the clinic grossly unsuitable as a surgical facility. The two surgical procedure rooms were filthy and unsanitary Ambulances were summoned to pick up the waiting patients, but no one, not even Gosnell, knew where the keys were to open the emergency exit. Emergency personnel had to use bolt cutters to remove the lock. They discovered they could not maneuver stretchers through the building's narrow hallways to reach the patients.

R. SETH WILLIAMS, Philadelphia District Attorney, REPORT OF THE GRAND JURY at 20–21 (Jan. 11, 2011), *available at* http://goo.gl/mYEeja.

Some of Petitioners' amici dismiss the Gosnell case as irrelevant, arguing that those responsible could have been held accountable under existing Pennsylvania abortion regulations without resort to requirements analogous to those at issue here. But Texas' hospital admitting privileges requirement adds meaningful additional supervision of abortion providers—supervision otherwise lacking or ineffective in the Gosnell case—that could have stopped Dr. Gosnell years earlier. And the ambulatory surgical center requirements help ensure that when regulators do inspect abortion clinics, they will be able to identify problems with the facilities before they fall into the

deplorable conditions that the Gosnell case shows are possible.

Further, Dr. Gosnell's abortion practice cannot be dismissed as an isolated example of a single bad doctor. *See* Eyal Press, *A Botched Operation*, THE NEW YORKER (Feb. 3, 2014), http://goo.gl/W84l0D (describing a chain of poorly run abortion clinics operated by Dr. Steven Chase Brigham and recounting, among other horrors, an instance in which "a woman had been left in a room with an unlicensed assistant who had not been trained to use the facility's cardiac machine, which, in any case, was broken; after the patient had a cardiopulmonary arrest, she was sent to a hospital, where she died"); J.A. 874–76 (discussing a doctor whose medical license was revoked in Maryland due to a botched abortion but who continues to practice in Utah owing to the absence of oversight from a hospital credentialing process). And as records from Petitioners' own abortion clinics underscore, it is not unusual for women to suffer complications even when they obtain abortions at facilities not mired in such scandals. *See* J.A. 606–700; *see generally* Marc Fischer, et al., *Fatal Toxic Shock Syndrome Associated with* Clostridium sordellii *After Medical Abortion*, 353 NEW ENG. J. MED. 2352 (Dec. 1, 2005), http://goo.gl/qj0sBK (describing several deaths from toxic shock syndrome following medicine-induced abortions).

Petitioners dispute the significance of such evidence by pointing to statistics showing, they argue, that serious complications from abortions performed in this Country are rare. *See* Brief for Petitioners at 15–16, *Whole Woman's Health v. Hellerstedt* (No. 15-

274). But a host of problems with how abortion statistics are reported and compiled provides ample reason seriously to question the accuracy of Petitioners' figures. *See* J.A. 844, 870–72. And in any event, the critical question is whether some abortion-related complications could be prevented by more careful regulatory oversight—not the absolute number of such complications that occur. In view of the Gosnell case and the other evidence in the record, the Texas Legislature reasonably concluded that more should be done to safeguard the health and safety of women who receive abortions.

The regulations that the Texas Legislature ultimately adopted are thus an entirely reasonable and justified means of protecting patients not only from the problem of unsafe abortion clinics run by unprofessional, incompetent, or unethical doctors, but also from the type of complications that inevitably arise at all abortion clinics. Requiring that physicians who perform abortions have admitting privileges at a nearby hospital not only ensures continuity of care for women who must go to the emergency room due to abortion-related complications but also means that hospitals will provide an additional layer of oversight for Texas abortion practitioners. Had such oversight been available and effective in the case of Dr. Gosnell, many lives would have been saved. Likewise, requiring abortion clinics to comply with the same rules that govern ambulatory surgical centers—facilities where other outpatient surgeries are performed in Texas—will help guarantee that the substandard facilities in which women are more likely to be injured, infected, or otherwise harmed are not permitted to operate. Re-

gardless of whether this Court believes that these legislative judgments reflect the best or wisest approach to protecting the safety of women in Texas, it owes the Texas Legislature substantial deference on this quintessentially legislative question and should hold that the challenged regulations are constitutionally permissible.

III. The Health and Safety Concerns That Justify Texas' Abortion Regulations Are Not Pretextual.

For many of the same reasons that this Court owes substantial deference to the Texas Legislature's judgment about the need for the regulations at issue in this case, it should likewise refuse to second guess the objectively legitimate health and safety considerations that Texas has identified as the rationale for those regulations. "It is a familiar principle of constitutional law that this Court will not strike down an otherwise constitutional statute on the basis of an alleged illicit legislative motive." *United States v. O'Brien*, 391 U.S. 367, 383 (1968). As this Court has repeatedly observed, "[p]roving the motivation behind official action is often a problematic undertaking"—especially where the actions of a large legislative body such as the Texas Legislature are concerned. *Hunter v. Underwood*, 471 U.S. 222, 228 (1985). That is because "individual legislators may vote[ ] for [a] statute for a variety of reasons," thus making the search for "the 'actual' or 'primary' purpose of a statute elusive." *Michael M. v. Superior Court of Sonoma Cnty.*, 450 U.S. 464, 470 (1981) (plurality); *see also O'Brien*, 391 U.S. at 383–84 ("Inquiries into congressional motives or purposes are a hazardous

matter."). In light of this difficulty, the Court is normally very reluctant to dismiss as pretextual a State's proffered rationale for its laws and will do so only when the State's asserted reason for the enactment of a statute "could not have been a goal of the legislation." *Weinberger v. Wiesenfeld*, 420 U.S. 636, 648 n.16 (1975); *see also Michael M.*, 450 U.S. at 470, 472 n.7 (plurality) (upholding statute—despite assuming arguendo that "one of the motives of the statute [was] impermissible"—so long as "at least one of the 'purposes' of the statute" was legitimate).

Petitioners fall far short of the showing that would be necessary to prove that Texas' explanation for its regulations is a mere pretext for gratuitously burdening abortion providers. As the Gosnell case underscores, there is ample basis for concluding that the regulations at issue in this case are justified by legitimate public health concerns over loosely regulated abortion providers. With objective evidence of this sort available to support Texas' abortion regulations, the subjective motivations of individual members of the legislature and scattered snippets of legislative history cannot overcome the presumption that the Texas Legislature adopted these regulations out of genuine concern for the health and safety of women who receive abortions. A contrary conclusion would lead to the absurd result that the abortion regulations at issue in this case might be constitutional in some places but not others, depending on the subjective intent or stray comments of individual members of different legislative bodies. As this Court explained in *O'Brien*, it is improper

> to void a statute that is, under well-settled criteria, constitutional on its face, on the

> basis of what fewer than a handful of Congressmen said about it. What motivates one legislator to make a speech about a statute is not necessarily what motivates scores of others to enact it, and the stakes are sufficiently high for us to eschew guesswork. We decline to void essentially on the ground that it is unwise legislation which Congress had the undoubted power to enact and which could be reenacted in its exact form if the same or another legislator made a "wiser" speech about it.

391 U.S. at 384.

The same reasoning applies with equal force here. Ample evidence supports the conclusion that the challenged regulations promote the health and safety of abortion patients. Petitioners cannot make the compelling showing that would be necessary to prove that these objectively legitimate health and safety concerns could not have motivated the Texas Legislature and therefore may be dismissed as mere pretext.

CONCLUSION

For the foregoing reasons, the Fifth Circuit's judgment should be affirmed.

Respectfully submitted,

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February 3, 2016

APPENDIX

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APPENDIX A

Full List of *Amici Curiae*

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Richard Burr (NC)

Dan Coats (IN)

Thad Cochran (MS)

John Cornyn (TX) (Majority Whip)

Tom Cotton (AR)

Mike Crapo (ID)

Ted Cruz (TX)

Steve Daines (MT)

Michael Enzi (WY)

Deb Fischer (NE)

Lindsey O. Graham (SC)

Chuck Grassley (IA)

Orrin G. Hatch (UT) (President Pro Tempore)

John Hoeven (ND)

James M. Inhofe (OK)

Johnny Isakson (GA)

Ron Johnson (WI)

James Lankford (OK)

Mike Lee (UT)

John McCain (AZ)

Jerry Moran (KS)

David Perdue (GA)

Rob Portman (OH)

James E. Risch (ID)

Pat Roberts (KS)

Marco Rubio (FL)

Ben Sasse (NE)

Richard Shelby (AL)

Thom Tillis (NC)

David Vitter (LA)

Roger Wicker (MS)

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Robert Aderholt (AL)

Brian Babin (TX)

Joe Barton (TX)

Dan Benishek, MD (MI)

Gus M. Bilirakis (FL)

Diane Black (TN)

Marsha Blackburn (TN)

Rod Blum (IA)

Charles W. Boustany, MD (LA)

Kevin Brady (TX)

Jim Bridenstine (OK)

Michael C. Burgess, MD (TX)

Earl Carter (GA)

John Carter (TX)

Steve Chabot (OH)

Curt Clawson (FL)

Tom Cole (OK)

Chris Collins (NY)

Doug Collins (GA)

Mike Conaway (TX)

Kevin Cramer (ND)

Ander Crenshaw (FL)

John Culberson (TX)

Ron Desantis (FL)

Mario Diaz-Balart (FL)

Sean Duffy (WI)

Jeff Duncan (SC)

Tom Emmer (MN)

Blake Farenthold (TX)

Stephen Fincher (TN)

Mike Fitzpatrick (PA)

John Fleming, MD (LA)

Bill Flores (TX)

Randy Forbes (VA)

Jeff Fortenberry (NE)

Virginia Foxx (NC)

Trent Franks (AZ)

Scott Garrett (NJ)

Louie Gohmert (TX)

Bob Goodlatte (VA)

Paul A. Gosar, DDS (AZ)

Kay Granger (TX)

Garret Graves (LA)

Sam Graves (MO)

Tom Graves (GA)

Morgan Griffith (VA)

Glenn Grothman (WI)

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Jeb Hensarling (TX)

Jody Hice (GA)

French Hill (AR)

George Holding (NC)

Richard Hudson (NC)

Tim Huelskamp (KS)

Bill Huizenga (MI)

Randy Hultgren (IL)

Will Hurd (TX)

Lynn Jenkins (KS)

Bill Johnson (OH)

Sam Johnson (TX)

Walter Jones (NC)

Jim Jordan (OH)

Mike Kelly (PA)

Trent Kelly (MS)

Steve King (IA)

John Kline (MN)

Darin LaHood (IL)

Doug Lamborn (CO)

Robert Latta (OH)

Dan Lipinski (IL)

Billy Long (MO)

Barry Loudermilk (GA)

Frank Lucas (OK)

Blaine Luetkemeyer (MO)

Kenny Marchant (TX)

Kevin McCarthy (CA) (House Majority Leader)

Michael McCaul (TX)

Patrick McHenry (NC)

Mark Meadows (NC)

Luke Messer (IN)

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Markwayne Mullin (OK)

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Scott Perry (PA)

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Joe Pitts (PA)

Ted Poe (TX)

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Reid Ribble (WI)

Martha Roby (AL)

Phil Roe, MD (TN)

Todd Rokita (IN)

Thomas J. Rooney (FL)

Peter Roskam (IL)

Keith Rothfus (PA)

David Rouzer (NC)

Steve Russell (OK)

Paul Ryan (WI) (Speaker of the House)

Matt Salmon (AZ)

Steve Scalise (LA) (House Majority Whip)

F. James Sensenbrenner, Jr. (WI)

Pete Sessions (TX)

John Shimkus (IL)

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Christopher H. Smith (NJ)

Lamar Smith (TX)

Chris Stewart (UT)

Marlin Stutzman (IN)

Glenn 'GT' Thompson (PA)

Mac Thornberry (TX)

Patrick Tiberi (OH)

Ann Wagner (MO)

Tim Walberg (MI)

Mark Walker (NC)

Jackie Walorski (IN)

Randy Weber (TX)

Daniel Webster (FL)

Brad Wenstrup (OH)

Bruce Westerman (AR)

Roger Williams (TX)

Joe Wilson (SC)

Rob Wittman (VA)

Steve Womack (AR)

Kevin Yoder (KS)

Ted Yoho (FL)

Ryan Zinke (MT)